

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. MILLER,

Defendant.

Case No. 1:17-cr-00182-1

Honorable Ellen S. Carmody
United States Magistrate Judge

JOINT SENTENCING MEMORANDUM

The Defendant, Donald J. Miller, by and through his attorney Gary Mouw, and the United States of America, by and through its attorneys, Andrew Byerly Birge, United States Attorney, and Kate Zell, Assistant United States Attorney, hereby submit this Joint Sentencing Memorandum in advance of Mr. Miller's sentencing on December 22, 2017, at 9:30 a.m.

I. BACKGROUND

On September 15, 2017, the United States of America filed an Amended Class A Misdemeanor Information charging Mr. Miller with the offense of theft within the special territorial jurisdiction of the United States, of personal property of another, namely a 2016 copy of the Federal Rules of Civil Procedure, the value of which was less than \$1,000, in violation of Title 18, United States Code, Sections 661 and 2. ECF No. 3, PageID.3.

On November 28, 2017, the United States Attorney's Office for the Western District of Michigan and Mr. Miller entered into a Plea Agreement, in which Mr. Miller agreed to plead guilty to the Amended Class A Misdemeanor Information. ECF No. 28, PageID.49-56. As recognized in the Plea Agreement, the property at issue in this case (a 2016 copy of the Federal Rules of Civil Procedure) was returned prior to the filing of the Information. *Id.* PageID.50.

Moreover, the Plea Agreement includes the government's agreement not to oppose Mr. Miller's request for a 2-level reduction of his offense level for acceptance of responsibility. *Id.* PageID.51. The government certified that the Defendant's guilty plea was made timely and saved the government the time and expense of preparing for trial. *Id.* The government also agreed not to oppose Mr. Miller's request to be sentenced to a fine of \$1,000, with no term of imprisonment, supervised release, or probation. *Id.* PageID.52.

II. SENTENCING GUIDELINES

Mr. Miller has three prior misdemeanor convictions, none of which score criminal history points. In August 2002, Mr. Miller was convicted of misdemeanor domestic violence and was sentenced to five days in jail, 12 months of probation, and a fine of \$918. In March 2006, Mr. Miller was convicted of operating a vehicle on a suspended license, and was sentenced to five days in jail and a fine of \$550. In August 2006, Mr. Miller was convicted of misdemeanor assault/battery and was sentenced to 93 days in jail, 12 months of probation, and a fine of \$420. Each of these sentences was imposed outside of the applicable time periods of United States Sentencing Guideline (USSG) § 4A1.2(e). As such, Mr. Miller has zero criminal history points and his Criminal History Category is I.

The Guideline section applicable to this offense is § 2B1.1 (addressing basic forms of property offenses). That section provides for a base offense level of 6. *See* USSG § 2B1.1(a)(2). None of the specific offense characteristics set forth in § 2B1.1(b) apply.

Mr. Miller requests a 2-level reduction in offense level for acceptance of responsibility, pursuant to § 3E1.1(a). As set forth in the Plea Agreement, the government does not oppose this request, certifying that "the Defendant's guilty plea was made timely and saved the Government the time and expense of preparing for trial." ECF No. 28, PageID.51. Accordingly, Mr. Miller's offense level is 4.

With an Offense Level of 4, and a Criminal History Category of I, the Sentencing Guidelines range is 0 to 6 months' imprisonment.

III. SENTENCING REQUEST

Mr. Miller respectfully requests that he be sentenced to a fine of \$1,000, with no term of imprisonment, supervised release, or probation. As set forth in paragraph 8 to the plea agreement, the government does not oppose this request. This sentence is within the Guidelines range.

ANDREW BYERLY BIRGE
United States Attorney

By: /s/ Kate Zell
Kate Zell
Assistant United States Attorney
The Law Bldg.
P.O. Box 208
Grand Rapids, MI 49501

VARNUM LLP
Attorneys for Defendant

By: /s/ Gary J. Mouw
Gary J. Mouw (P69236)
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000